REMARKS

[0003] Claims 1-6, 8-11, 16-18, 20, and 24-26 stand rejected under 35 U.S.C. § 102 as being anticipated by US Patent Application Number 2003/0208,284 to Stewart (Hereinafter "Stewart"). Claims 12-15 and 19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Stewart. Claims 21-23 and 28-30 stand rejected under 35 U.S.C. § 103 as being unpatentable over Stewart in view of Applicants' admission.

RESPONSE TO CLAIM REJECTIONS UNDER 35 U.S.C. § 102

[0004] Claims 1-6, 8-11, 16-18, 20, and 24-26 stand rejected under 35 U.S.C. § 102 as being anticipated by Stewart. With regard to independent Claims 1, 16, 24, and 26, the Office Action states that Stewart discloses the invention as claimed. Applicants respectfully disagree because Stewart fails to disclose each and every element of the invention as recited in the amended claims.

[0005] It is well settled that a claim is anticipated only if the reference includes each and every limitation of the claim. Furthermore, the Examiner bears the burden of establishing a *prima facie* case of anticipation.

[0006] Amended Claim 1 recites dynamic population of a measurement object in response to a polling inquiry. The Stewart reference does not dynamically populate a measurement object in response to a polling inquiry. First, Stewart does not "measure" as is denoted by a "measurement object" as the term is commonly used. "Measure" may be defined as "to ascertain the extent, dimensions, quantity, capacity, etc., of, esp. by comparison with a standard: to measure boundaries." (dictionary.com). Stewart generates simulated performance data that is an approximation based on a mathematical model rather than ascertaining the performance data. Because the data in Stewart is

produced by a simulation there is no need or desire to "measure" anything to generate performance data,

[0007] Second, Stewart does not populate a measurement object in response to a polling inquiry. As is used in the art, "polling" is defined as "To check the status of an input line, sensor, or memory location to see if a particular external event has been registered." (dictionary.com "poll"). Stewart does not use polling, but generates simulated results on-demand rather than checking the status of an input to see if data is available. Of particular note, a polling inquiry may or may not result in result data, depending on whether the desired status or event has occurred. In contrast, in the artificial world of the simulations in Stewart there is no need or desire for polling because the simulated data is generated in response to a request. This request is fundamentally different from a polling inquiry.

[0008] In addition, amended Claim 1 recites that the dynamically populated measurement object comprises "updated" performance data. Stewart does not operate with updated performance data. Rather, Stewart relies on mathematical models to create performance prediction. (Stewart, Paragraph 26). Since Stewart is limited to predicting performance, Stewart does not receive updated performance data. In Stewart, the simulator is not constantly running or idling until a poll inquiry is received. This does not make sense because the simulated performance data is simply generated when needed.

[0009] Applicants respectfully submit that Stewart does not teach dynamically populating a measurement object in response to a polling inquiry from a modeling module, the measurement object comprising updated performance data associated with the operation of a computer system for

the reasons described above. Consequently, Applicants believe that Stewart does not anticipate the amended claims.

[0010] Support for these amendments is found in Paragraphs 81 and 82 of the published Specification, which state that "The run-time manager 308 may pass a measurement object to the data collection module 304 periodically to poll for updated performance data 306" and "For each workload object instance 309 the run-time manager 308 may generate and pass a measurement object to the data collection module 304 associated with a particular workload object instance 309."

[0011] In the previous Office Action Response, Applicants noted that Stewart is directed toward the optimization of *simulations* of computer systems rather than actual computer systems. The simulations in Stewart generate "simulation results". (Stewart, Paragraph 18). At no point does Stewart disclose collecting data from a computer system as claimed in the present invention.

[0012] In support of this fact, Applicants directed the Examiner to various points in the Detailed Description that define the scope of the terms in the Claims. Specifically, models are defined as operating on data collected from "deployed and prototypical systems." (Specification, Paragraph 67).

[0013] Further definitions are found in the original specification for "computer system". Paragraph 79 states that "the computer system 302 being monitored, modeled, and analyzed may include a plurality of computer systems, include server farms, data storage systems, and the like. The present invention may be used with any combination of computer equipment that are organized to perform computing operations include collaborative computer systems such as grid systems." At no point does the specification define or imply that "computer system" is a simulation that produces simulation results as described in Stewart.

[0014] The specification also defines "computing workload" as follows: "As used within this specification, the terms "workload(s)" and "computing workload(s)" refer to any operation tasked to a module, logic unit, processor, or other computational component of an electronic system, including but not limited to a personal computer, a serve, a mainframe computer, computer sub-system, and the like." (ibid, paragraph 59).

[0015] The plain meaning of "computing workload" is defined as "some amount of application programming running in the computer and usually some number of users connected to and interacting with the computer's applications". (see, for example, http://searchdatacenter.techtarget.com/sDefinition/0,,sid80_gci970333,00.html). The simulations in Stewart are simple mathematical models that do not include application programming running in a computer. Applicants submit that the use of the term "computing workload" in the pending claims further emphasizes the distinction that the present invention operates on computer systems that are handling and performing useful computing work in real-time. In contrast, Stewart is working with results generated by a simulation aka "canned data."

[0016] These definitions clearly state that monitored computer systems are, in fact, physical tangible computer systems performing real, relevant work, not simulations. The claims should be interpreted using these definitions. The inventor is his own lexicographer. (MPEP 2173.08(a)). "Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999) (meaning of words used in a claim is not construed in a "lexicographic vacuum, but in the context of the specification and drawings")" (MPEP 2111.01)

[0017] In the absence of a clear definition of a term in the specification, the plain meaning of the term is used to construct the claim. (MPEP 2111.01) In this case, "computer system" is commonly defined as "a system of one or more computers and associated software with common storage." ("computer system." WordNet® 3.0. Princeton University. 22 Oct. 2007. <Dictionary.com http://dictionary.reference.com/browse/computer system>.) This definition is consistent with the definition in the specification.

[0018] Claim 1 recites a data collection module that uses updated "performance data associated with the operation of a *computer system*". (Claim 1, emphasis added). This claim, using the definition above, is clearly directed toward a computer system rather than a simulation of a computer system. The current amendments clarify this distinction, reciting that "the computer system comprising at least one physical processor and physical storage, the computer system executing a plurality of computing workloads". Support for this clarifying amendment is taken from the plain meaning of "computer system".

[0019] A simulation that is a simple process that does nothing but generate "simulation results" does not fit within the definitions of "computer system" found within the Specification or the plain meaning of the term "computer system". A simulation is not "one or more computers," does not have "storage," and, in short, is not a "computer system." One skilled in the art would not confuse a simulation of a computer system as described in Stewart with a computer system.

[0020] Since Stewart does not disclose a data collection module that gathers data associated with a computer system, Stewart does not anticipate Claim 1. Consequently, the Examiner has not presented a *prima facie* case of anticipation and Claim 1 is allowable.

[0021] The Final Office Action relies on the title of Stewart for the assertion that Stewart teaches the optimization of a computer system as claimed in the present invention. (Ibid, 2, iii). Applicants respectfully disagree. Notwithstanding the title, Stewart is focused on the design of "proposed" systems. (Stewart, Paragraph 3). Stewart determines an optimal configuration for the proposed system by running simulations of the proposed system. (Ibid, Paragraph 18). At no point does Stewart disclose collecting data from a "computer system" using the common meaning of the term or the definition provided in the Specification. In short, the "computer system" referred to in the title of Stewart is a "proposed" computer system that exists only in the ephemeral bits and bytes of the simulation and the mind of a designer, rather than a computer system as commonly known in the art.

[0022] Since Stewart does not include a data collection module, and Stewart optimizes simulations, instead of actual computer systems, the reference does not include each and every element of independent Claim 1. Therefore, Stewart does not anticipate Claim 1. Consequently, Applicants request that the rejection of independent Claim 1 under 35 U.S.C. § 102 be withdrawn.

[0023] Since Stewart fails to teach each and every element of the amended claims, Stewart does not anticipate the amended claims. Consequently, Applicants request that the rejection of Claims 1, 12, 16, 21, 24, 26, and 28 in view of Stewart be withdrawn.

[0024] Independent Claims 16, 24, and 26 include similar amendments reciting dynamic population of a measurement object in response to a polling inquiry and that the dynamically populated measurement object comprises updated performance data. These claims also include amendments clarifying that the computer system comprises at least one physical processor and physical storage, and that the computer system executes a plurality of computing workloads as

described above. Since Stewart does not teach these elements of the independent claims rejected under 35 U.S.C. § 102, Stewart does not include each and every limitation of the independent claims. Consequently, Stewart does not anticipate the claims, and Applicants respectfully request that the rejection of independent Claims 1, 16, 24, and 26 be withdrawn.

[0025] Dependent Claims 5-6, 8-11, 17, 18, and 25 depend from claims that are allowable as described above. Consequently, Applicants respectfully request that the rejection of dependent Claims 5-6, 8-11, 17, 18, and 25 be withdrawn.

RESPONSE TO CLAIM REJECTIONS UNDER 35 U.S.C. § 103

[0026] Claims 12-15 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Stewart. Claims 21-23 and 28-30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Stewart in light of Applicants own Admission. In the previous Response, Applicants argued that modifying Stewart to include the elements of the present invention would destroy the utility of Stewart. Applicants note that the Examiner has not responded to this argument.

[0027] In addition, independent Claims 12, 21, and 28 include amendments similar to those described in relation to Claim 1 above, and consequently Stewart does not teach each and every element of these independent Claims. As a result, Stewart does not anticipate or suggest independent Claims 12, 21, or 28. Consequently, Applicants request that the rejection of independent Claims 12, 21, and 28 under 35 U.S.C. § 103 be withdrawn.

[0028] As stated in the previous Response, in addition to failing to teach all the elements of the invention, a modification of Stewart to include the elements of the invention would destroy the

utility of Stewart. Applicants refer the Examiner to that argument in the previous response on pages 14-15, paragraphs 6-10.

[0029] Since a modification of the reference to include a data collection from an existing computer system would render it unsatisfactory for its intended purpose, such a modification of Stewart is not obvious. Therefore, Stewart does not anticipate or suggest Claims 12, 21, or 28. Consequently, Applicants request that the rejection of independent 12, 21, and 28 under 35 U.S.C. § 103 be withdrawn.

[0030] Claims 22-23 and 29-30 depend from independent claims that are allowable, as described above. Consequently Applicants request that the rejection of dependent Claims 22-23 and 29-30 under 35 U.S.C. § 103 be withdrawn.

CONCLUSION

[0031] As a result of the presented amendments and remarks, Applicant asserts that Claims 1-6, 8-26, and 28-30 are patentable and in condition for prompt allowance. Should additional information be required, the Examiner is respectfully asked to notify Applicants of such need. If any impediments to the prompt allowance of the claims can be resolved by a telephone conversation, the Examiner is respectfully requested to contact the undersigned.

Respectfully submitted,

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